IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20837 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANJULABEN MOHANLAL DESAI - Petitioner(s)

Versus

STATE OF GUJARAT & 9 - Respondent(s)

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Appearance :

NANAVATY ADVOCATES for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6,1.2.7
MR. DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 – 5.
None for Respondent(s) : 2 - 5,7 - 10.
MR TUSHAR MEHTA for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/10/2005

ORAL JUDGMENT

Leave to delete respondent Nos.7 to 10.

1. Rule. Shri Dipen Desai, learned AGP waives service of Rule on behalf of respondent Nos.1 to 5. Shri Tushar

Mehta, learned advocate waives service of Rule on behalf of respondent No.6.

2. With the consent of the learned advocates appearing on behalf of the parties, the matter is taken up for final hearing today.

3. In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat dated 8.8.2005 passed in Revision Application No.14/2005 in vacating the order of status-quo granted earlier, during the pendency of the Revision Application.

4. It appears from the record that being aggrieved and dissatisfied with the order passed by the Collector, Kutch dated 4.4.2004, the petitioners have preferred the Revision Application No.14/2005 and in the said Revision Application, they have also submitted application for interim relief. Initially, the Revisional Authority ordered for status-quo during the pendency of the Revision Application, however, the respondent No.3 herein submitted application for vacating the interim relief and that is why the application was heard by the Revisional

Authority and the Revisional Authority i.e. Additional Secretary (Appeals), Revenue Department, State of Gujarat vide his impugned order dated 8.8.2005 has vacated the order of status-quo granted earlier during the pendency of the aforesaid Revision Application No.14/2005. Being aggrieved and dissatisfied with the same the petitioners have preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

5. Shri N.D.Nanavati, learned Senior Advocate appearing on behalf of the petitioners has vehemently submitted that the impugned order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat is non-speaking and non-reasoning order and no reasons have been assigned by the Additional Secretary (Appeals), Revenue Department, State of Gujarat in vacating the interim relief and vacating the order of status-quo granted earlier. It is further submitted that even otherwise, if the interim relief as prayed for is not granted during the pendency of the Revision Application, the Revision Application itself would become infructuous and the respondent No.6 would be putting up the construction and therefore, it is submitted that the Additional Secretary (Appeals), Revenue Department, State of Gujarat ought to have continued the order of status-

quo even on merits during the pendency of the Revision Application.

6. Shri Dipen Desai, learned AGP is not in a position to support the impugned order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat to the extent that the same is non-speaking and non-reasoning order. Shri Tushar Mehta, learned advocate appearing on behalf of the respondent No.6 is also not in a position to support the order to the extent that the same is a non-speaking and non-reasoning order. Under the circumstances, without expressing any opinion on the merits of the case as it may ultimately affect the either parties as the Revision Application is pending, this Court feels that since the impugned order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat vacating order of status-quo is non-speaking and non-reasoning and therefore, the matter is required to be remanded to the Additional Secretary (Appeals), Revenue Department, State of Gujarat for deciding said application and/or application submitted by the respondent No.6 for vacating interim relief afresh in accordance with law and on merits and to direct the Additional Secretary (Appeals), Revenue Department, State of Gujarat to pass speaking and reasoned order. However,

in the facts and circumstances of the case, this Court proposes to direct the Additional Secretary (Appeals), Revenue Department, State of Gujarat to decide and dispose of the said Revision Application itself in the peculiar facts and circumstances of the case and direct the parties to maintain status-quo till the Revision Application is decided. Under the circumstances, following direction is issued :

The impugned order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat dated 8.8.2005 passed in Revision Application No.14/2005 in vacating the order of status-quo is hereby quashed and set aside and the Additional Secretary (Appeals), Revenue Department, State of Gujarat is directed to decide and dispose of the Revision Application No.14/2005 as early as possible preferably within a period of 3 months from the date of receipt of this order without in any way being influenced by the fact that this Court has granted the order of status-quo. Until the Revision Application is finally disposed of by the Additional Secretary (Appeals), Revenue Department, State of Gujarat, the parties are directed to maintain status-quo.

7. Rule is made absolute to the aforesaid extent,

however, there will be no order as to costs.

Direct Service is permitted.

(M.R.SHAH, J.)

kdc.